

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ROSALIE CAIMI,)	
)	
Claimant,)	IC 02-011566
)	
v.)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
INCLUSION NORTH,)	AND RECOMMENDATION
)	
Employer,)	Filed
)	March 24, 2006
and)	
)	
ADVANTAGE WORKERS)	
COMPENSATION INSURANCE)	
COMPANY)	
)	
Surety,)	
)	
Defendants.)	
_____)	

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Robert D. Barclay, who conducted a hearing in Lewiston on July 12, 2005. Claimant, Rosalie Caimi, was present in person and represented by Thomas W. Callery of Lewiston; Defendant Employer, Inclusion Inc., and Defendant Surety, Advantage Workers Compensation Insurance Company, were represented by Edgar L. Annan, of Spokane. The parties presented oral and documentary evidence. This matter was then continued for the taking of post-hearing depositions, the submission of briefs, and subsequently came under advisement on November 14, 2005. Referee Barclay retired from the Idaho Industrial Commission and the matter was reassigned to Referee Alan Taylor.

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ISSUES

The noticed issues to be resolved are:

1. Whether Claimant's medical treatment to her low back subsequent to October 2002 is causally related to her industrial accident of July 16, 2002; and,
2. Whether Claimant is entitled to permanent partial impairment benefits, and the extent thereof.

ARGUMENTS OF THE PARTIES

Claimant argues her July 16, 2002, industrial accident caused her need for medical treatment and resulted in a permanent partial impairment rating of 4% of the whole person.

Defendants Employer and Surety contend that Claimant's July 16, 2002, industrial accident temporarily aggravated her long-standing pre-existing low back condition, that the temporary aggravation resolved by September 2002, and that Claimant suffered no permanent impairment due to her July 16, 2002, industrial accident.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant taken at the July 12, 2005, hearing;
2. Claimant's Exhibits 1 through 13 admitted at the hearing;
3. Defendants Employer and Surety's Exhibits 1 through 19 admitted at the hearing;
4. The deposition of Robert Colburn, M.D., taken by Claimant on July 22, 2005; and,
4. The deposition of William R. Pace, III, M.D., taken by Defendants on August 17, 2005.

After having fully considered all of the above evidence, and the arguments of the parties, the

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Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

1. Claimant was born in 1972, was 33 years old and resided in Clarkston, Washington at the time of the hearing. She graduated from high school at Kooskia in 1991. After high school, she worked at the Grangeville Care Center for approximately one year and obtained her CNA. She then relocated to Rexburg and worked at the Rexburg Nursing Care Center.

2. On July 11, 1992, Claimant injured her low back while lifting a patient at the Rexburg Nursing Care Center. She noticed immediate dull aching low back pain which worsened significantly over the following days. Claimant was unable to work and treated for a time with Thomas J. Setter, M.D., of Idaho Falls who prescribed medications and physical therapy. He noted Claimant had severe back pain, but no leg pain. In August 1992, Claimant moved back to Kooskia. On August 15, 1992, Claimant was hospitalized due to severe low back pain. She had unusual symptoms including jerking, spasms, and was nearly unable to walk, all apparently due to her reaction to four different medications. She was treated by J.E. Rockwell, M.D. All medications were stopped and her condition improved greatly. She was discharged on August 18, 1992. Her care was transferred to Ronald Sigler, M.D., in Cottonwood. She continued to receive physical therapy for approximately four months and was off work for a total of 22 weeks. By December 7, 1992, Dr. Sigler released her to her regular position, and by December 22, 1992, she began working again. Claimant received no impairment rating due to her 1992 injury.

3. On January 25, 1993, Claimant was seen by Marvin Kym, M.D., who diagnosed mechanical low back pain and recommended an aerobic conditioning program and a 30-pound

lifting restriction. Claimant described some numbness into her thigh a few months prior, but this had resolved. Dr. Kym noted that Claimant had no radiating symptoms and straight leg raising tests were negative. Dr. Kym reported that x-rays and an MRI of Claimant's low back were all negative. Claimant was treated with prescription anti-inflammatory medication and physical therapy and her condition improved. By March 12, 1993, Claimant was discharged from physical therapy with a note that she had stabilized, had been entirely pain free for three weeks, had resumed full-time employment at a nursing home, and had resumed all normal activities of daily living without any back pain.

4. In 1993, Claimant worked at the Clarkston Care Center, Seubert's Assisted Living Center, and at the Grangeville Care Center. With one minor exception, she had no back problems after her return. On July 6, 1993, Claimant filed an incident report at Seubert's Assisted Living Center when she noted some low back pain after helping a patient down the stairs. Her back pain resolved promptly. Claimant did not miss any work time because of the incident and did not seek any medical attention. Claimant worked generally at nursing home care institutions from 1993 through 1994 where she performed her full share of lifting patients to help them maneuver from beds to chairs, get in and out of bed, in and out of the shower, on and off the toilet, and assisting people in walking.

5. From 1994 through 2001, Claimant continued to work full or part-time, except for approximately two years which she spent at home caring for her children. Much of her employment during this period included secretarial, clerical, or other office work. She also worked grading molding and as a convenience store clerk. Claimant had no back symptoms.

6. In approximately 2001, Claimant filed an incident report for low back pain while

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working for Idaho Sewing for Sports, but the owner threw the report away. She lost no time from work and sought no medical treatment. Claimant's testimony at hearing is the only evidence of this incident.

7. At hearing, Claimant testified that between approximately May 2001 and February 2003, she had a couple of back "twinges" for which she saw a chiropractor named Hill in Kooskia. Claimant's testimony at hearing is the only evidence of these episodes.

8. The record does not refute Claimant's assertion that she functioned without lifting restrictions and performed whatever lifting her various employments required from 1993 until 2002. Other than the minor isolated incidents already noted, Claimant was free of back pain.

9. In April 2002, Claimant commenced working for Employer Inclusion North, which provides services and therapy for developmentally challenged individuals. Claimant was assigned to work with several patients.

10. On July 16, 2002, Claimant was at work walking with a developmentally disabled patient when the patient abruptly began to fall backwards. Claimant grabbed the patient and arrested her fall. In doing so, Claimant felt an immediate burning pain in her low back. During the walk, the patient nearly fell backwards two more times. Each time, Claimant arrested the patient's fall and continued to feel burning low back pain. Claimant reported the accident and continued to work the rest of her shift.

11. On July 23, 2002, Claimant presented to Jeffrey K. Edwards, M.D., with complaints of low back pain. Claimant reported some pain on the right, but her pain was predominately left-sided. Dr. Edwards recorded her complaints of left lower back pain radiating into the buttock and thigh area. He noted a positive straight leg raising test on the left, negative on the right. Dr.

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Edwards diagnosed work related left L5-S1 radicular pain. He prescribed muscle relaxers, anti-inflammatory medication, and ordered physical therapy. Claimant was off work for only three days. She then resumed working with restrictions during the course of her treatment. Through several months of physical therapy Claimant learned various exercises which helped reduce her back pain.

12. On September 27, 2002, Keith A. Haugen, M.D., a partner of Dr. Edwards, noted that Claimant very rarely had minimal back pain, enjoyed a full range of motion, and a negative straight leg raising test. His assessment was low back pain with radicular symptoms apparently completely resolved at that point. He gave Claimant a full duty release with no restrictions. Claimant returned to her regular duties with Employer until she ceased her employment in March 2003.

13. Claimant maintains that she recovered substantially from her 2002 industrial accident, but was not entirely pain-free in that she continued to have occasional leg pain, and a minimal degree of back pain from time to time. She managed these occasional symptoms with prescription Naproxen.

14. Claimant began college studies in January 2003, and consequently became less physically active. In May 2003, Claimant's back pain escalated when she took an intensive English course which required her to sit in class for three hours at a time, four days per week. On May 15, 2003, Claimant presented to the Lewis and Clark State College Health Services with complaints of depression and low back pain. She was treated with Zoloft.

15. On July 29, 2003, Claimant presented with low back pain to W. R. England, M.D., in Lewiston, who examined her but declined to provide regular follow-up care.

16. Claimant's low back pain worsened to the point that she could not stand at the sink and do dishes for any significant length of time, stand and fold laundry for any significant period, sit

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on a rock while fishing with her children, or sleep on the ground when camping. In the summer of 2003, Claimant asked the Surety to reopen her workers' compensation case.

17. Finally on October 13, 2003, Claimant returned to Dr. Edwards with complaints of low back pain, and pain radiating into her right hip and thigh. Dr. Edwards prescribed Lodine and physical therapy. The physical therapy helped decrease Claimant's back pain, but did not improve her intermittent leg pain and numbness. Claimant reported right leg symptoms to Dr. Edwards again on November 5, 2003. Claimant's persisting right L5-S1 radicular pain, even after physical therapy, prompted Dr. Edwards to order an MRI.

18. On November 13, 2003, Claimant underwent an MRI which radiologist Mark Peterson, M.D., read as showing a "moderate sized protruding disc [at L4-5] in the midline extending slightly to the left ...causing mild indentation of the thecal sac and may be touching the left L5 nerve root." Claimant's Exhibit 6, p. 147. Dr. Peterson's summary impression was "small herniated disc in the midline extending to the left at L4-5." Id.

19. Dr. Edwards referred Claimant to a pain clinic, and on May 21, 2004, Claimant was evaluated by Craig G. Flinders, M.D., at the Interventional Pain Consultants. At the clinic, Claimant received lumbar epidural injections on May 21, 2004, June 11, 2004, July 2, 2004, and August 27, 2004. Each of the first three injections helped relieve her back and leg pain for approximately one month, then the pain returned.

20. On November 12, 2004, Claimant was seen by neurosurgeon Steven K. Goodwin, M.D., who noted her MRI showed a degenerative disc at L4-5 with some bulging to the left, but not a herniation. He reported that her bilateral leg pain was not consistent with the disc bulge. He advised Claimant that her condition would not be improved by lumbar surgery and recommended

increased exercise.

21. On March 31, 2005, orthopedist Robert Colburn, M.D., examined Claimant for an independent evaluation at Claimant's request. Dr. Colburn produced a report of April 2, 2005, regarding his findings. He opined Claimant's medical treatment after September 2002 was related to her 2002 industrial accident. Dr. Colburn rated Claimant's permanent impairment at 6% of the whole person, attributing 2% to her pre-existing back condition and 4% to her 2002 industrial accident.

22. On May 19, 2005, Claimant was examined by orthopedic surgeon William Pace III, M.D., at Defendants' request. Claimant reported to Dr. Pace that the prior Friday she had experienced lower extremity numbness. However, because she did not complain of lower extremity symptoms at the time of the examination, Dr. Pace performed no detailed sensory testing of the lower extremities. Dr. Pace noted the period from 1993-2002 when Claimant was essentially symptom free. Nevertheless, he diagnosed chronic recurrent mechanical low back pain and opined that Claimant's 2002 accident constituted a temporary aggravation of her preexisting condition, which aggravation resolved completely within three months. Dr. Pace read the 2003 MRI as showing a right sided disc bulge, however he considered Claimant's symptoms unrelated to any disc pathology and opined that Claimant's MRI was normal and the disc bulge as documented on her MRI a normal variant. He found Claimant fixed and stable, and rated her impairment at 0%.

23. At the time of hearing, Claimant experienced frequent back pain and intermittent leg pain. Dr. Edwards imposed a 40-pound weight lifting restriction upon Claimant due to her back condition. Since her 2002 accident, Claimant has been continuously employed, and has worked regularly except for the three days immediately after her accident. With increasing back pain,

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Claimant has sought and located employment that does not require her to lift patients. She continues to attend college classes and is pursuing a nursing degree. Claimant has gained weight due to her decreased activity resulting from her back pain. At the time of the hearing, she was five feet four inches tall and weighted two hundred and forty pounds. She attends an exercise studio and participates to the extent she can tolerate the exercises. Claimant's back pain improves if she is able to sit or stand and move around as needed.

24. Having carefully examined the record herein, the Referee finds Claimant is a credible witness.

DISCUSSION AND FURTHER FINDINGS

25. **Additional medical benefits.** The provisions of the Workers' Compensation Law are to be liberally construed in favor of the employee. Haldiman v. American Fine Foods, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. Ogden v. Thompson, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996).

26. A claimant must prove not only that he or she was injured, but also that the injury was the result of an accident arising out of and in the course of employment. Seamans v. Maaco Auto Painting, 128 Idaho 747, 751, 918 P.2d 1192, 1196 (1996). A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. Langley v. State, Industrial Special Indemnity Fund, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995).

27. Idaho Code § 72-432(1) mandates that an employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches, and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury or manifestation of an occupational disease, and for

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a reasonable time thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer. Idaho Code § 72-432(1) obligates an employer to provide treatment if the employee's physician requires the treatment and if the treatment is reasonable. Sprague v. Caldwell Transportation, Inc., 116 Idaho 720, 779 P.2d 395 (1989). For the purposes of Idaho Code § 72-432(1), medical treatment is reasonable if the employee's physician requires the treatment and it is for the physician to decide whether the treatment is required. Mulder v. Liberty Northwest Insurance Company, 135 Idaho 52, 58, 14 P.3d 372, 402, 408 (2000). Of course, the employer is only obligated to provide medical treatment necessitated by the industrial accident. The employer is not responsible for medical treatment not related to the industrial accident. Williamson v. Whitman Corp./Pet, Inc., 130 Idaho 602, 944 P.2d 1365 (1997).

28. In the present case, Claimant asserts that she is entitled to medical benefits for treatment of her low back condition after September 2002, through the time of hearing because the need for such treatment is casually related to her July 16, 2002, industrial accident. Defendants maintain that Claimant has failed to prove the 2002 industrial accident caused her need for treatment after September 2002.

29. Dr. Colburn opined Claimant's medical treatment after September 2002, was related to her 2002 industrial accident. Dr. Pace opined it was not. Dr. Pace opined that Claimant's 2002 accident constituted only a temporary aggravation of her preexisting back condition, which aggravation resolved completely within three months.

30. Dr. Pace's opinion discounts the fact that Claimant went over nine years after being released from her 1992 back injury with only two known reports of low back complaints, neither of which resulted in time loss from work or medical treatment. Claimant's report of low back pain at

Seubert's in July 1993, and at Idaho Sewing for Sports in approximately 2001, were both so minor in character as to not even call for any medical attention. Claimant reported receiving chiropractic treatment on two isolated occasions for back "twinges" but otherwise sought no medical treatment whatsoever for her back for over nine years. This substantial period with isolated minor reports of back pain strongly supports Claimant's testimony that, with these minor exceptions, she had no back pain for the nearly nine years prior to her 2002 accident. This is especially significant in that from early 1993 until July 2002, Claimant performed all duties required in her various employments, including those several employments requiring lifting patients.

31. Dr. Pace's opinion is further weakened by his apparent refusal to recognize the different nature of Claimant's symptoms after her 1992 injury and after her 2002 accident. During his examination, Dr. Pace did not perform any lower extremity sensory testing because Claimant did not report any lower extremity symptoms on the day he examined her, even though she reported that she had experienced lower extremity symptoms less than one week before. Dr. Pace indicated that he did not believe there ever were any radicular symptoms reported by Claimant. However, Claimant reported leg pain along with her back pain when she was first examined by Dr. Edwards on July 23, 2002. She regularly reported lower extremity symptoms to various physicians who saw her after the 2002 accident. Claimant also testified to the difference in the pain she experienced from her 1992 injury as contrasted with her 2002 accident. The 1992 accident produced a deep ache and stiffness in her low back, but no low back burning and no leg pain. Her testimony in this regard is consistent with Dr. Setter's 1992 notes. In contrast, the 2002 accident produced burning low back pain and intermittent numbness and pain going down her legs. This change in symptoms, which has been ongoing on an intermittent basis since Claimant's 2002 accident, suggests a different injury or

a permanent aggravation rather than a temporary aggravation superimposed on Claimant's 1992 injury.

32. Finally, it is noteworthy that the results of Claimant's MRI after her 1992 back injury were reported as normal by Dr. Kym. In contrast, the results of Claimant's MRI after her 2002 accident showed a bulging L4-5 disc. Radiologist Mark Peterson, Dr. Goodwin, and Dr. Edwards all opined that Claimant's 2002 MRI showed a left sided disc bulge, however, Dr. Pace read the MRI as showing a right sided disc bulge. Nevertheless, even after noting the disc bulge, Dr. Pace opined that Claimant's MRI was normal.

33. Dr. Colburn's opinion that Claimant's back symptoms requiring medical attention after September 2002, relate to her July 16, 2002, industrial accident is supported by the reported different results of MRI studies in 1992 and 2003. Dr. Colburn's opinion is also supported by the difference in Claimant's symptoms after the 1992 injury as compared to those after her 2002 accident—especially the manifestation of leg pain. His opinion is not undermined by Claimant's essentially pain free functioning from 1993 until July 16, 2002.

34. The Referee finds the opinion of Dr. Colburn persuasive and concludes that Claimant's need for medical care for her low back after September 2002, was related to her industrial injury of July 16, 2002.

35. **Impairment.** "Permanent impairment" is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and which abnormality or loss, medically, is considered stable or non-progressive at the time of evaluation. Idaho Code § 72-422. "Evaluation (rating) of permanent impairment" is a medical appraisal of the nature and extent of the injury or disease as it affects an injured employee's personal efficiency in the activities of daily

living, such as self-care, communication, normal living postures, ambulation, traveling, and non-specialized activities of bodily members. Idaho Code § 72-424. When determining impairment, the opinions of physicians are advisory only. The Commission is the ultimate evaluator of impairment. Urry v. Walker & Fox Masonry Contractors, 115 Idaho 750, 755, 769 P.2d 1122, 1127 (1989).

36. Dr. Pace rated Claimant's impairment due to her July 2002 industrial accident at 0%. However, as noted above, he considered Claimant's back symptoms after September 2002 unrelated to her July 2002 accident, and considered Claimant's 2002 MRI, documenting an L4-5 disc bulge, as normal. His opinion is not persuasive.

37. Dr. Colburn rated Claimant's permanent impairment at 6% of the whole person, attributing 2% to her pre-existing back condition and 4% to her 2002 industrial accident. This rating is consistent with Table 15-3 of the AMA Guides to the Evaluation of Permanent Impairment, 5th Edition, and is supported by evidence submitted and the causal connection between Claimant's July 16, 2002, accident and her need for further medical treatment after September 2002.

38. The Referee finds that Claimant suffers a permanent impairment of 6% of the whole person, including 4% due to her industrial accident of July 16, 2002.

CONCLUSIONS OF LAW

1. Claimant has proven she is entitled to medical care for her July 16, 2002, industrial accident, including medical care received for her low back condition after September 2002.

2. Claimant has proven she is entitled to permanent partial impairment of 4% of the whole person due to her July 16, 2002, industrial accident.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusions of Law as its own, and issue an appropriate final order.

DATED this 14th day of March, 2006.

INDUSTRIAL COMMISSION

/s/ _____
Alan Reed Taylor, Referee

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of March, 2006, a true and correct copy of **Findings of Fact, Conclusions of Law, and Recommendation** was served by regular United States Mail upon each of the following:

THOMAS W CALLERY
PO BOX 854
LEWISTON ID 83501

EDGAR L ANNAN
5915 S REGAL ST STE 210
SPOKANE WA 99223

kk

/s/ _____